

AMENDED IN ASSEMBLY SEPTEMBER 11, 2003

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN SENATE MAY 7, 2003

## SENATE BILL

**No. 808**

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**Introduced by Senator Karnette**  
**(Principal Coauthor: Senator Perata)**  
(Principal Coauthor: Assembly Member Lowenthal)

February 21, 2003

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An act to repeal and add Section 6385 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

SB 808, as amended, Karnette. Sales and use taxes: exemptions: bunker fuel.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for the sale of tangible personal property to a common carrier, as provided.

This bill would additionally exempt, until 2014, the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, if specified conditions are met. *This bill would require the Legislative Analyst's office to submit a report to the Governor and the Legislature that evaluates the economic impact of the exemption.*

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the  
2 following:

3 (a) Because the state has reinstated a sales tax on bunker fuel,  
4 the amount of petroleum coke produced in California will increase  
5 substantially. Several million dollars that had annually been used  
6 to purchase millions of gallons of bunker fuel in California will  
7 instead be invested in other states and nations along the west coast  
8 of North America.

9 (b) Adding a sales tax to bunker fuels has a demonstrable  
10 negative effect on California's trade industry and sectors of the  
11 economy that rely on trade. Similarly, increasing taxes on bunker  
12 fuel results in environmental and health repercussions.

13 (c) Petroleum coke is a dry, dusty, residual product created  
14 during the final stages of the oil refining process. It is used as an  
15 alternative energy source in many poor countries. After petroleum  
16 is refined for automobile fuel, truck fuel, and jet fuel, it is further  
17 refined into a lower grade fuel used primarily for kerosene and  
18 bunker fuel. Unused bunker fuel is further refined into petroleum  
19 coke.

20 (d) Samples of petroleum coke dust have turned up high levels  
21 of the potentially carcinogenic chemicals chrysene and  
22 vanadium. When airborne, petroleum coke can travel alone or



1 attach to other harmful particulate matter such as diesel fuel.  
2 Although various storage techniques can limit airborne movement  
3 of petroleum coke dust, most movement occurs when the dust is  
4 moved by truck.

5 SEC. 2. Section 6385 of the Revenue and Taxation Code is  
6 repealed.

7 SEC. 3. Section 6385 is added to the Revenue and Taxation  
8 Code, to read:

9 6385. (a) There are exempted from the computation of the  
10 amount of the sales tax the gross receipts from the sale of tangible  
11 personal property, other than fuel and petroleum products, to a  
12 common carrier, shipped by the seller via the purchasing carrier's  
13 facilities under a bill of lading whether the freight is paid in  
14 advance, or the shipment is made freight charges collect, to a point  
15 outside this state and the property is actually transported to the  
16 out-of-state destination for use by the carrier in the conduct of its  
17 business as a common carrier.

18 (b) There are exempted from the computation of the amount of  
19 the sales tax the gross receipts from the sale of tangible personal  
20 property, other than aircraft fuel and petroleum products,  
21 purchased by a foreign air carrier and transported by the foreign  
22 air carrier's facilities to a foreign destination for use by the air  
23 carrier in the conduct of its business as a common carrier by air of  
24 persons or property. To qualify for this exemption, the foreign air  
25 carrier shall furnish to the seller a certificate in writing that the  
26 property shall be transported and used in the manner required in  
27 this subdivision. The certificate shall be substantially in the form  
28 prescribed by the board. A seller is not liable for the sales tax if the  
29 seller accepts the certificate in good faith. If the seller does not  
30 have the certificate at the time the board requests the seller to  
31 submit the certificate to the board, the seller shall be given a  
32 reasonable time to request the foreign air carrier to provide the  
33 seller with the certificate. The foreign air carrier shall maintain  
34 records in this state, such as a copy of a bill of lading, an air  
35 waybill, or cargo manifest, documenting its transportation of the  
36 tangible personal property to a foreign destination.

37 (c) There are exempted from the computation of the amount of  
38 the sales tax the gross receipts from the sale of fuel and petroleum  
39 products to a water common carrier, for immediate shipment  
40 outside this state for consumption in the conduct of its business as

1 a common carrier after the first out-of-state destination. To qualify  
2 for the exemption the common carrier shall furnish to the seller an  
3 exemption certificate in writing stating the quantity of fuel and  
4 petroleum products claimed as exempt which is to be consumed  
5 after reaching the first out-of-state destination. That certificate  
6 shall bear the purchaser's valid seller's permit number or valid fuel  
7 exemption registration number and shall be substantially in the  
8 form prescribed by the board. Acceptance in good faith of that  
9 certificate shall relieve the seller from liability for the sales tax.

10 (d) "First out-of-state destination," as used in this section,  
11 means the first point reached outside this state by a common carrier  
12 in the conduct of its business as a common carrier at which cargo  
13 or passengers are loaded or discharged, cargo containers are added  
14 or removed, fuel is bunkered, or docking fees are charged. "First  
15 out-of-state destination," as used in this section, also includes the  
16 entry point of the Panama Canal when the carrier is only transiting  
17 the canal in the conduct of its business as a common carrier.

18 (e) "Common carrier," as used in this section, with respect to  
19 water transportation, shall be deemed to include any vessel  
20 engaged, for compensation, in transporting persons or property in  
21 interstate or foreign commerce.

22 (f) "Foreign air carrier," as used in this section, means a  
23 foreign air carrier as defined in Section 40102 of Title 49 of the  
24 United States Code.

25 (g) "Immediate shipment," as used in this section, means that  
26 the delivery of the fuel and petroleum products by the seller is  
27 directly into a ship for transportation outside this state and not for  
28 storage by the purchaser or any third party.

29 (h) Any common carrier claiming exemption under  
30 subdivision (c) who is not required to hold a valid seller's permit  
31 shall be required to register with the board and obtain a fuel  
32 exemption registration number and shall be required to file returns  
33 as the board may prescribe if either the board notifies the carrier  
34 that returns must be filed or the carrier is liable for taxes based  
35 upon consumption of fuel erroneously claimed as exempt under  
36 this section. A common carrier required to hold a fuel exemption  
37 registration number shall be subject to all applicable provisions of  
38 this part, Part 1.5 (commencing with Section 7200), and Part 1.6  
39 (commencing with Section 7251).

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt. If the carrier fails to provide these records upon request, the board may revoke the carrier's fuel exemption registration number.

(j) The board may require any carrier claiming an exemption under this section and required to obtain a fuel exemption registration number to place with it that security as the board may determine pursuant to Section 6701.

(k) Pursuant to subdivisions (a), (b), and (c), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to the first out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to the first out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(l) *On December 31, 2005, the Legislative Analyst's office (LAO) shall submit a report to the Governor and the Legislature that evaluates the economic impact of the partial sales tax exemption regarding bunker fuel.*

(m) This section shall remain in effect only until January 1, 2014, and as of that date is repealed.

SEC. 4. Section 6385 is added to the Revenue and Taxation Code, to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

1 (b) There are exempted from the computation of the amount of  
2 the sales tax the gross receipts from the sale of tangible personal  
3 property, other than aircraft fuel and petroleum products,  
4 purchased by a foreign air carrier and transported by the foreign  
5 air carrier's facilities to a foreign destination for use by the air  
6 carrier in the conduct of its business as a common carrier by air of  
7 persons or property. To qualify for this exemption, the foreign air  
8 carrier shall furnish to the seller a certificate in writing that the  
9 property shall be transported and used in the manner required in  
10 this subdivision. The certificate shall be substantially in the form  
11 prescribed by the board. A seller is not liable for the sales tax if the  
12 seller accepts the certificate in good faith. If the seller does not  
13 have the certificate at the time the board requests the seller to  
14 submit the certificate to the board, the seller shall be given a  
15 reasonable time to request the foreign air carrier to provide the  
16 seller with the certificate. The foreign air carrier shall maintain  
17 records in this state, such as a copy of a bill of lading, an air  
18 waybill, or cargo manifest, documenting its transportation of the  
19 tangible personal property to a foreign destination.

20 (c) "Common carrier," as used in this section, with respect to  
21 water transportation, shall be deemed to include any vessel  
22 engaged, for compensation, in transporting persons or property in  
23 interstate or foreign commerce.

24 (d) "Foreign air carrier," as used in this section, means a  
25 foreign air carrier as defined in Section 40102 of Title 49 of the  
26 United States Code.

27 (e) Pursuant to subdivisions (a) and (b), any use of the property  
28 by the purchasing carrier, other than that incident to the delivery  
29 of the property to the carrier and the transportation of the property  
30 by the carrier to an out-of-state destination and subsequent use in  
31 the conduct of its business as a common carrier, or a failure of the  
32 carrier to document its transporting the property to an out-of-state  
33 destination, shall subject the carrier to liability for payment of  
34 sales tax as if it were a retailer making a retail sale of the property  
35 at the time of that use or failure, and the sales price of the property  
36 to it shall be deemed to be the gross receipts from the retail sale.

37 (f) This section shall become operative on January 1, 2014.

38 SEC. 5. Notwithstanding Section 2230 of the Revenue and  
39 Taxation Code, no appropriation is made by this act and the state



1 shall not reimburse any local agency for any sales and use tax  
2 revenues lost by it under this act.

3 SEC. 6. This act provides for a tax levy within the meaning of  
4 Article IV of the Constitution and shall go into immediate effect.  
5 However, the provisions of this act shall become operative on the  
6 first day of the first calendar quarter commencing more than 90  
7 days after the effective date of this act.

